



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,933	07/21/2003	James C. Smith		6471

7590
James C. Smith
336 Harder Road
Hayward, CA 94544

05/14/2007

EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
----------	--------------

3781

MAIL DATE	DELIVERY MODE
-----------	---------------

05/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/623,933

Applicant(s)

SMITH, JAMES C.

Examiner

James N. Smalley

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-23 and 47-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-23 and 47-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 31 October 2006 has been entered.

Claim Rejections - 35 USC § 102

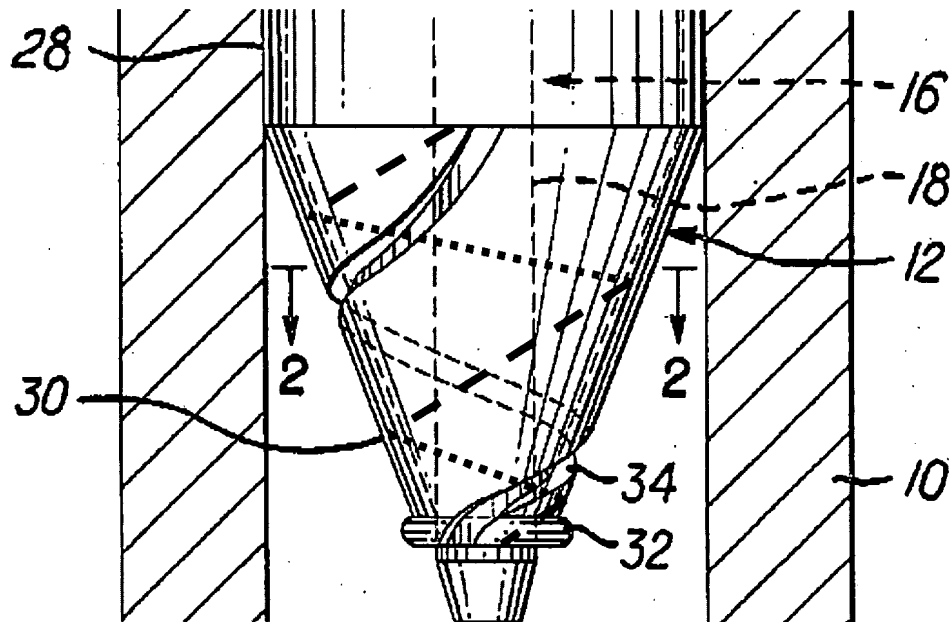
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 18 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Carluccio US 4,390,298.

Carluccio '298 teaches a tubular member (10) having an open end, and a wiping cap (12) including a cup-shaped conical wiper, and a frustum (26) for mating with the tubular member. Examiner notes the wiper forms a seal at the apex around the applicator head (22), which alternatively can be read as forming a substantial seal because it tapers to a narrow opening. Also, Examiner notes the wiper appears to make more than one full revolution. See the dotted lines below whereby it appears the wiper actually makes almost two revolutions. Examiner notes the dashed line represents the frontal path, and the dotted line is the path as it is traced behind the cone. Also, note the very bottom of the line is difficult to see, but can be seen adjacent the line for element (32). Finally, Examiner notes the spiral cut (34) appears to make one full revolution. It is suggested the Applicant amend the claim to better define the structural differences over Carluccio '298 in view of this analysis.



Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 18-23 and 47-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith US 5,513,768 in view of Carluccio US 4,390,298 and in view of Leopardi et al. US 5,514,339.

Smith '768 teaches a cap for a container (12) comprising a locking cap (16) and a sealing cap (14) with a syringe port (54) and sealing frustum (27). The embodiment of figure 6 teaches the locking cap and syringe cap being connected to the container by hinges (22) and (38). The embodiment of figure 13B teaches a threaded connection (188).

Smith '768 does not teach a wiping feature.

Leopardi '339, column 4, lines 13-20, teaches it is desirable to provide a wiping feature to remove excess liquid, such as blood, from the syringe (43).

Art Unit: 3781

Carluccio '298 teaches it is known to provide a wiping feature in the form of a conical wiper (30) with a helical slot (34). Although disclosed for a brush applicator, the device is inherently capable of wiping a syringe.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Smith '768, providing a wiping feature comprising a conical wiper with a helical slot on the cap (14) as this is the portion of the cap to be punctured by the pipette tip, as taught by Carluccio '298, and taught to be a desirable addition to a syringe port by Leopardi '339, motivated by the benefit of removing excess liquid such as blood, from a syringe.

Response to Arguments

6. Applicant's arguments filed 31 October 2006 have been fully considered but they are not persuasive.

Applicant argues Carluccio '298 does not teach a substantial closure and furthermore does not teach the wiper extending more than one revolution.

Examiner notes the wiper forms a seal at the apex around the applicator head (22), which alternatively can be read as forming a substantial seal because it tapers to a narrow opening. Also, Examiner notes the wiper appears to make more than one full revolution, as shown in the drawing provided above.

Conclusion

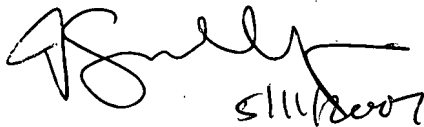
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3781

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns


5/11/2007

ANTHONY D. STASHICK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700